

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE LARRY ALAN BURNS, JUDGE PRESIDING

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UNITED STATES OF AMERICA,  
PLAINTIFF,

NICOLE KISSANE,  
DEFENDANT.

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)  
) CASE NO. 15CR1928-LAB  
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)  
) SAN DIEGO, CALIFORNIA  
) TUESDAY JULY 5, 2016  
) 9:30 A.M. CALENDAR  
)  
)  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

COUNSEL APPEARING:  
FOR PLAINTIFF:

LAURA E. DUFFY,  
UNITED STATES ATTORNEY  
BY: MICHAEL F. KAPLAN  
ASSISTANT U.S. ATTORNEY  
880 FRONT STREET  
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT:

FEDERAL DEFENDERS OF SAN DIEGO, INC.  
BY: JOHN C. ELLIS  
REUBEN C. CAHN  
TRIAL ATTORNEYS  
225 BROADWAY, SUITE 900  
SAN DIEGO, CALIFORNIA 92101

REPORTED BY:

LEE ANN PENCE,  
OFFICIAL COURT REPORTER  
UNITED STATES COURTHOUSE  
333 WEST BROADWAY ROOM 1393  
SAN DIEGO, CALIFORNIA 92101

SAN DIEGO, CALIFORNIA - TUESDAY, JULY 5, 2016 - 10:25 A.M.

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**THE CLERK:** CALLING NO. 7 ON THE CALENDAR, 15CR1928,  
UNITED STATES OF AMERICA VERSUS NICOLE KISSANE.

IF COUNSEL COULD STATE THEIR APPEARANCE FOR THE  
RECORD, PLEASE.

**MR. ELLIS:** GOOD MORNING, YOUR HONOR. JOHN ELLIS,  
REUBEN CAHN, FEDERAL DEFENDERS, ON BEHALF OF MS. KISSANE. SHE  
IS PRESENT BEFORE THE COURT ON BOND.

**THE COURT:** GOOD MORNING.

**MR. CAHN:** GOOD MORNING, YOUR HONOR.

**THE COURT:** GOOD MORNING, MR. KAPLAN.

**MR. KAPLAN:** GOOD MORNING, YOUR HONOR. I WAS GOING  
TO WAIT FOR MR. CAHN TO INTRODUCE HIMSELF.

MICHAEL KAPLAN FOR THE UNITED STATES.

**THE COURT:** HE IS SUCH A PRESENCE THAT WE DON'T EVEN  
NEED A NAME. EVERYBODY KNOWS.

**MR. CAHN:** I THOUGHT MR. ELLIS HAD ANNOUNCED MY  
APPOINTMENT. BUT IF NOT, I AM RUEBEN CAHN ON BEHALF OF NICOLE  
KISSANE.

**THE COURT:** WE PUT THIS MATTER OVER FOR MS. KISSANE  
TO MAKE A DECISION ABOUT WHETHER SHE WANTED TO STICK WITH HER  
PLEA AGREEMENT, GIVEN THAT THE COURT WAS NOT INCLINED TO  
ACCEPT IT, DID NOT ACCEPT IT. IT WAS A (C)(1)(C) TYPE PLEA.  
SO I GAVE HER, AS CASE LAW INDICATES, THE OPTION TO EITHER

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1 STICK WITH IT OR TELL ME THAT SHE WANTS TO GO FORWARD AND HAVE  
2 HER CASE LITIGATED.

3 SO TODAY WAS THE TIME, AND NOW IS THE TIME, FOR YOU  
4 TO TELL ME WHAT HER INCLINATION IS.

5 **MR. ELLIS:** YES, YOUR HONOR. MS. KISSANE IS GOING  
6 TO WITHDRAW HER GUILTY PLEA.

7 **THE COURT:** OKAY. THE COURT WILL PERMIT THAT. HER  
8 GUILTY PLEA IS WITHDRAWN, THE COURT HAVING REJECTED THE  
9 11(C)(1)(C) PLEA.

10 I GUESS WHAT WE NEED TO DO IS SET THIS FOR A MOTIONS  
11 HEARING, THEN.

12 **MR. ELLIS:** CORRECT, YOUR HONOR.

13 **MR. CAHN:** THAT'S CORRECT.

14 **THE COURT:** HOW LONG DO YOU NEED?

15 **MR. CAHN:** JUDGE, I THINK WE CAN HAVE OUR MOTIONS  
16 FILED WITHIN TWO WEEKS. WE HAD OBVIOUSLY BEGUN PREPARING THEM  
17 BEFORE WE REACHED A PLEA AGREEMENT.

18 **THE COURT:** OKAY.

19 AND THE GOVERNMENT, HOW LONG WILL YOU NEED TO  
20 RESPOND, MR. KAPLAN, A COUPLE WEEKS?

21 **MR. KAPLAN:** A COUPLE OF WEEKS AT LEAST, YES.

22 **MR. CAHN:** THEY ARE GOING TO BE -- WE WARNED  
23 MR. KAPLAN, THEY ARE GOING TO BE QUITE SUBSTANTIAL. WHAT WE  
24 HAD WORKED UP EVEN BEFOREHAND WAS QUITE LENGTHY.

25 **MR. KAPLAN:** I HAVEN'T SEEN THEM YET, YOUR HONOR.

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1           **THE COURT:** ARE THERE ANY MATTERS PENDING NOW, ANY  
2 MOTIONS PENDING?

3           **MR. ELLIS:** THERE ARE, YOUR HONOR. THE COURT HAD  
4 NOT RESOLVED THE DISCOVERY MOTION COMPLETELY. WE ARE STILL  
5 WORKING OUT SOME DISCOVERY ISSUES, HAVING GONE BACK THROUGH.

6           **THE COURT:** TIME IS TOLLED UNDER THE SPEEDY TRIAL.

7           **MR. ELLIS:** YES, YOUR HONOR.

8           **MR. CAHN:** OUR BELIEF IS NO TIME HAS RUN SO FAR  
9 BECAUSE DISCOVERY MOTIONS WERE ON FILE AT THE TIME MS. KISSANE  
10 ARRIVED IN THE DISTRICT.

11           **THE COURT:** HERE IS WHAT I AM INCLINED TO DO. I  
12 THINK MR. CAHN KNOWS THIS, BUT I HAVE A SON WHO IS GETTING  
13 MARRIED IN AUGUST, AND I AM GOING TO BE TAKING A LOT OF THAT  
14 MONTH OFF. WE ARE AT THE FIRST OF JULY NOW. RATHER THAN TRY  
15 TO JAM THIS TO THE FIRST OF AUGUST I WOULD BE INCLINED TO PUT  
16 IT OVER TO SEPTEMBER, IF THAT IS AGREEABLE TO THE PARTIES.

17           THE DEFENDANT IS ON BOND, TIME IS TOLLED. IT  
18 WILL GIVE YOU AN OPPORTUNITY -- I'M NOT GOING TO HAVE THEM  
19 FILE THREE WEEKS BEFORE, I WILL HAVE THEM FILE AS SOON AS  
20 POSSIBLE SO YOU WILL HAVE PLENTY OF TIME TO REVIEW AND FILE A  
21 RESPONSE.

22           **MR. KAPLAN:** THANK YOU.

23           **MR. CAHN:** WE CAN STICK WITH THE TWO-WEEK DATE, YOUR  
24 HONOR.

25           **THE COURT:** OKAY. WHAT IF I SET THIS FOR A HEARING

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1 ON THE 26TH OF SEPTEMBER ON THE MOTIONS. WE CAN CERTAINLY --  
2 IF THE MOTIONS AREN'T DISPOSITIVE WE CAN TRY THE CASE THIS  
3 YEAR FOR SURE. I MEAN, I WOULD SET A FAIRLY QUICK TRIAL DATE  
4 AFTER THAT.

5 **MR. KAPLAN:** THAT IS FINE WITH THE GOVERNMENT, YOUR  
6 HONOR. I WAS CHECKING WITH THE VICTIMS, AND THEY WANT TO BE  
7 PRESENT.

8 **MR. CAHN:** JUDGE, I WAS JUST GOING TO ASK. IS THERE  
9 ANY CHANCE WE COULD DO IT ANOTHER DAY? I AM SUPPOSED TO BE IN  
10 WASHINGTON THAT DAY. ANY OTHER DAY THAT WEEK IS FINE.

11 **MR. ELLIS:** AND SETTING THIS FOR AN OFF DATE MIGHT  
12 MAKE SENSE AS WELL, YOUR HONOR. SETTING THIS ON AN OFF DATE  
13 IF YOU HAVE IT.

14 **THE COURT:** MAKES MORE SENSE.

15 HOW ABOUT THE 27TH, WILL YOU BE BACK THE 27TH,  
16 TUESDAY?

17 **MR. CAHN:** I WILL MAKE A POINT OF FLYING BACK THAT  
18 NIGHT, CATCH A RED-EYE.

19 **THE COURT:** SO THE 27TH. AND WHY DON'T WE SET IT AT  
20 10:00 O'CLOCK IN THE MORNING.

21 **MR. CAHN:** PERFECT.

22 **THE COURT:** TISH, THAT IS TUESDAY THE 27TH OF  
23 SEPTEMBER, 10:00 A.M., FOR MOTIONS.

24 **THE CLERK:** YES, YOUR HONOR.

25 **THE COURT:** THE COURT FINDS, MOTIONS PENDING, TIME

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1 IS EXCLUDED. BOTH SIDES HAVE AGREED TO THIS DATE.

2 I INDICATE AGAIN THAT IF THE MOTIONS AREN'T  
3 DISPOSITIVE WE ARE GOING TO SET A FAIRLY PROMPT TRIAL DATE  
4 AFTER THAT.

5 SO YOU SHOULD BE READY TO GO, AND YOU SHOULD NOTIFY  
6 WITNESSES ACCORDINGLY, MR. KAPLAN.

7 **MR. KAPLAN:** THAT IS FINE.

8 YOUR HONOR, THE TRIAL -- I APOLOGIZE -- THE MOTION  
9 DATE THAT YOU SET, THE 27TH.

10 **THE COURT:** TUESDAY.

11 **MR. KAPLAN:** TUESDAY. THE DEFENSE IS GOING TO FILE  
12 THEIRS WITHIN TWO WEEKS?

13 **MR. CAHN:** TWO WEEKS OF TODAY.

14 **MR. KAPLAN:** TWO WEEKS OF TODAY. SO WOULD IT BE ALL  
15 RIGHT IF WE FILED OURS WITHIN THE NORMAL PERIOD OF TIME PRIOR  
16 TO THAT?

17 **THE COURT:** SURE.

18 **MR. ELLIS:** YOUR HONOR, TWO LAST THINGS, BRIEFLY.

19 ONE THING IS WE WILL BE REQUESTING AN EVIDENTIARY  
20 HEARING. SHOULD WE CHECK WITH GOVERNMENT COUNSEL AND YOUR  
21 COURT CLERK TO SEE IF YOU WOULD WANT TO GO FORWARD WITH AN  
22 EVIDENTIARY HEARING AT THAT TIME?

23 **THE COURT:** ON WHICH ISSUE?

24 **MR. ELLIS:** WELL, THERE IS GOING TO BE SOME FOURTH  
25 AMENDMENT ISSUES THAT WE WILL BE REQUESTING A HEARING ON, AS

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1 WELL AS SOME MIRANDA ISSUES THAT I THINK WILL RESOLVE AFTER  
2 THE GOVERNMENT FILES THEIR MOTIONS. BUT I KNOW OFTENTIMES  
3 THIS COURT DOES LIKE TO GO FORWARD AT THAT HEARING.

4 **THE COURT:** YES, YES. I AM NOT GOING TO BIFURCATE  
5 IT IF THERE IS GOING TO BE AN EVIDENTIARY HEARING. BUT OF  
6 COURSE SHE HAS TO FILE A DECLARATION, WE HAVE TO HAVE A JOINED  
7 ISSUE. I AM NOT GOING TO HAVE A HEARING JUST TO HAVE A  
8 HEARING. IF IT MEETS THE STANDARD FOR AN EVIDENTIARY HEARING.

9 **MR. ELLIS:** I GET IT, YOUR HONOR. NO, WE ARE NOT  
10 PLAYING GAMES. I JUST WANTED TO MAKE SURE.

11 **THE COURT:** I DON'T THINK YOU ARE.

12 **MR. ELLIS:** AND THEN THE LAST THING I WOULD SAY ON  
13 THAT IS THE COURT HAS ALLOWED US TO WITHDRAW THE GUILTY PLEA.  
14 CAN WE MOVE TO WITHDRAW OUR SENTENCING MEMORANDUM AND THE  
15 P.S.R.?

16 **THE COURT:** YES. BOTH OF THOSE MAY BE WITHDRAWN AT  
17 THIS TIME.

18 THE P.S.R., IT HASN'T -- IT IS NOT PUBLIC, WON'T BE  
19 MADE PUBLIC, SO I AM NOT GOING TO TELL THEM TO SHRED IT.

20 **MR. ELLIS:** UNDERSTANDABLE, YOUR HONOR.

21 **THE COURT:** IT IS NOT IN FURTHER CONSIDERATION AT  
22 THIS POINT.

23 **MR. ELLIS:** VERY WELL. I GUESS TO BE CLEAR, THEN,  
24 MY OBJECTIONS TO THE P.S.R. AND THE SENTENCING MEMO, IT WOULD  
25 BE MY REQUEST TO WITHDRAW.

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1           **THE COURT:** IT WILL BE WITHDRAWN. SHE HAS WITHDRAWN  
2 HER PLEA, THERE IS NO REASON TO HAVE A PROBATION REPORT  
3 BECAUSE SHE IS NOT GUILTY.

4           I WILL SEE YOU ON THE 27TH.

5           MR. KAPLAN, HAVE WITNESSES READY. WE ARE GOING TO  
6 CONCLUDE THE MOTIONS THAT DAY.

7           **MR. KAPLAN:** APPROXIMATELY, YOUR HONOR, JUST BECAUSE  
8 THERE ARE -- THE COURT IS WELL AWARE HOW MANY WITNESSES THE  
9 GOVERNMENT ANTICIPATES IT MAY HAVE TO CALL IN THIS CASE COMING  
10 FROM VARIOUS PARTS OF THE UNITED STATES. APPROXIMATELY HOW  
11 LONG DO YOU ANTICIPATE ALLOWING US -- ALLOWING -- THE TIME  
12 PERIOD BETWEEN THE FINALIZED MOTION HEARING DATE AND THE TRIAL  
13 DATE?

14           **THE COURT:** WE WILL FINISH THE MOTIONS ON THE 27TH.  
15 I WOULD ASSUME FIRST OF NOVEMBER.

16           **MR. CAHN:** JUDGE, IF WE CAN DO IT A LITTLE LATER IN  
17 NOVEMBER. I HAVE GOT A PREPLANNED VACATION, ALL PAID FOR, IN  
18 THE EARLY PART OF NOVEMBER.

19           **THE COURT:** WHEN ARE YOU LEAVING?

20           **MR. CAHN:** IN LATE OCTOBER, MID OCTOBER. I AM BACK  
21 THE 12TH OF NOVEMBER, SO ANY TIME AFTER THAT.

22           **THE COURT:** OKAY. WELL, WHY DON'T WE LOOK AT  
23 NOVEMBER 15TH AS A STARTING DATE. THAT'S THE WEEK BEFORE  
24 THANKSGIVING, SO THAT GIVES US PLENTY OF TIME. ALL RIGHT?

25           **MR. KAPLAN:** VERY GOOD. THANK YOU.

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1           **THE COURT:**    THAT IS TENTATIVE AT THIS POINT.

2           **MR. KAPLAN:**   JUST AN IDEA, SO WE HAVE AN IDEA.

3           **THE COURT:**   IF THE MOTIONS AREN'T DISPOSITIVE THEN  
4   LIKELY NOVEMBER 15TH WILL BE THE TRIAL START DATE.

5           **MR. CAHN:**    THANK YOU, YOUR HONOR.

6           **MR. ELLIS:**   THANK YOU.

7

8                                   \*   \*   \*

9           I CERTIFY THAT THE FOREGOING IS A CORRECT  
10   TRANSCRIPT FROM THE RECORD OF PROCEEDINGS  
11   IN THE ABOVE-ENTITLED MATTER.

12                                   S/LEEANN PENCE                                   8/8/2016

13                                   LEEANN PENCE, OFFICIAL COURT REPORTER    DATE

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